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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,493	07/29/2003	Ralph P. Stillman	13560.1USC1	7439
23552	7590	06/01/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			WOOD, KIMBERLY T	
			ART UNIT	PAPER NUMBER
			3632	
DATE MAILED: 06/01/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/629,493

Applicant(s)

STILLMAN, RALPH P.

Examiner

Kimberly T. Wood

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 26-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/3/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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This is the first office action for serial number 10/629,493, entitled Holder for Supporting a Cleaning Utensil, filed on July 29, 2003.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 32, 33, 43, 44, 55, 56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 32, 33, 43, 44, 55, and 56 recite the limitation "the retaining member" in line 1. There is insufficient antecedent basis for this limitation in the claim.

The claims have been rejected under 35 U.S.C. 112 for the above reasons. Please note that the Examiner may not have pointed out each and every example of indefiniteness. The applicant is required to review all the claim language to make sure the claimed invention is clear and definite.

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**Double Patenting**

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 26, 29-31, 34, and 37-59 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of U.S. Patent No. 6,619,604. Although the conflicting claims are not identical, they are not patentably distinct from each other because Patent No. "609" discloses a support platform defines a first and second drainage channel, a drainage conductor including a first and second flange members, a retaining arrangement comprising a ridge member, an attachment device is removable without any tools and being a suction cup, a cleaning utensil including a head and a body portion defining a reservoir.

Claims 27, 28, 32, and 33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 22-25 of U.S. Patent No. 6,619,604 in view of Schwab 1,309,965. Patent No. 6,619,604 discloses all of the limitations of the claimed invention except for the retaining member comprising a ridge member integral with the support platform or one or more grooves defined in the support platform; the drainage conductor comprising an open plate member and first and second flange members. Schwab teaches that it is known to have a holder comprising a support platform (1), a retaining arrangement comprising a ridge member (3) or one or more grooves or drainage channels (7), a drainage conductor comprising an open plate member (4) and first and second flange member (5) along a periphery of the drainage conductor, first and second sidewalls (element 2 on left and right side of platform), a backwall (2) and an attachment device (12 and 13). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Patent No. 6,619,604 to have included the retaining member comprising a ridge member integral with the support platform or one or more grooves defined in the support platform for the purpose of providing a means of preventing the supported object from slipping into the sink. It would have been obvious to one having

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ordinary skill in the art at the time of the invention to have modified Patent No. 6,619,604 to have included the drainage conductor comprising an open plate member with first and second flange members as taught by Schwab for the purpose allowing water that has dispensed from the support object to drain from the support platform back into the sink.

Claims 35 and 36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 22-25 of U.S. Patent No. 6,619,604 in view of Von Seidel 5,680,929. Patent No. 6,619,604 discloses all of the limitations of the claimed invention except for the attachment device being a suction cup and the holder being made of polymeric material. Von Seidel discloses an attachment device being a suction cup (28) and a holder being made of polymeric material. It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Patent NO. 6,619,604 to have included the suction cup as taught by Von Seidel for the purpose of facilitating attachment of the holder to the support surface. It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Patent NO. 6,619,604 to have the holder being made of polymeric material as taught by Von

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Seidel for the purpose of being cost effective since polymeric material is known to be relative easy to find and inexpensive.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26, 29, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Pratt 1,221,587. Pratt discloses system comprising a cleaning utensil (see figure 3) including a head portion (near 4 and above) and a body portion having a reservoir (1), and a holder (Figure 1) comprising a support platform (19), a retaining arrangement (the surface used hold the utensil within the support platform), and the drainage channel (the opening where the untensil is held in the platform (19)), an attachment device would be the bottom of the vertical member where 19 is attached to the support that can be attached (temporarily assigned) or detached from a horizontal support surface.

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Claims 38-45, 48-51, and 53-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwab 1,309,965. Schwab discloses a holder comprising a support platform (1), a retaining arrangement comprising a ridge member (3) or one or more grooves or drainage channels (7), a drainage conductor comprising an open plate member (4) and first and second flange member (5) along a periphery of the drainage conductor, first and second sidewalls (element 2 on left and right side of platform), a backwall (2) and an attachment device (12 and 13).

Claims 38-43, 47-50, 53-55, and 58 are rejected under 35 U.S.C. 102(b) as being anticipated by Southard 4,993,546. Southard discloses a holder being polymeric material (see cross-hatch) comprising a support platform (14a), drainage channels (the area between element 23), a retaining arrangement (23), a drainage conductor comprising an open plate member (21 and 24) and first and second flange member (20 and 19) along a periphery of the drainage conductor, first and second sidewalls (16 and 15), and a backwall (11).

Claims 38-43, 45-55, 57, and 58 are rejected under 35 U.S.C. 102(b) as being anticipated by Von Seidel 5,680,929. Von Seidel discloses a holder comprising a support platform (see figures 1-8), a retaining arrangement (15) comprising a ridge member (3), drainage channels (6), a drainage conductor



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comprising an open plate member (13 or 19) and first and second flange member (the extending members on the left and right sides of open plate member 19 in figure 5) along a periphery of the drainage conductor, first and second sidewalls (16), a backwall (at the back extending upwardly) and an attachment device (28) being a suction cup.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pratt 1,221,587. Pratt discloses all of the limitations of the claimed invention except for the holder being manufactured from a polymeric material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the holder of polymeric material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis

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of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Southard 4,993,546 in view of Martell 5,242,064. Southard discloses all of the limitations of the claimed invention except for the ceramic material. Martell teaches that it is known to have a holder being made of ceramic material (column 2, lines 66ff). It would have been obvious to one having ordinary skill in the art to have modified Southard to have made the holder of ceramic as taught by Martell as desired by the manufacturer for design or aesthetics.

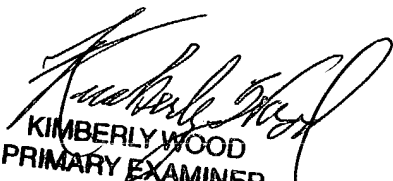
Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Von Seidel 5,680,929 in view of Martell 5,242,064. Von Seidel discloses all of the limitations of the claimed invention except for the ceramic material. Martell teaches that it is known to have a holder being made of ceramic material (column 2, lines 66ff). It would have been obvious to one having ordinary skill in the art to have modified Von Seidel to have made the holder of ceramic as taught by Martell as desired by the manufacturer for design or aesthetics.

#### **Conclusion**

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly Wood whose telephone number is (703) 308-0539. The examiner can normally be reached on Monday-Thursday from 7:30 AM to 5:00 PM. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168. The fax number for an Official Amendment or Response is (703) 872-9306. The fax number for an Unofficial Amendment or Response is (703) 308-3686.

Kimberly Wood  
Primary Examiner  
May 24, 2004

  
KIMBERLY WOOD  
PRIMARY EXAMINER